



INTERIOR BOARD OF INDIAN APPEALS

John W. Bale v. Commissioner of Indian Affairs

8 IBIA 200 (11/21/1980)

Denying reconsideration of:
8 IBIA 158



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

JOHN W. BALE

v.

COMMISSIONER OF INDIAN AFFAIRS

: Order Denying Petition for
: Reconsideration
:
: Docket No. IBIA 80-15-A (Supp.)
:
: November 21, 1980

On November 20, 1980, John W. Bale, through counsel, filed an application addressed to the Acting Associate Solicitor seeking a fact-finding hearing and moving to strike the solicitor's brief filed May 9, 1980, in the above-entitled appeal. The Board handed down a final decision in this matter on October 15, 1980. See 8 IBIA 158 (1980). Departmental rules provide for "reconsideration" of Board decisions, 43 CFR 4.21(c), but do not permit further appeal within the Department from decisions by the Board, which are the final administrative determination for the agency. 43 CFR 4.1. Appellant's application for relief is therefore treated as a petition for reconsideration in accordance with established departmental procedures.

The application is unsupported by any showing of need for further fact finding to support a determination of the matters previously decided by the Board. The record before the Board establishes that there are no apparent disputed facts material to a resolution of the issues raised by the cancellation of appellant's lease with the tribe which were not adequately documented so as to permit decision. Appellant's application for further fact finding is denied.

Similarly, the motion to strike the solicitor's brief for untimeliness is without merit. The Board may, in its discretion, consider a brief filed out of time. By regulation, the only document which it may not consider if untimely filed is a notice of appeal. 43 CFR 4.22. The brief filed May 9, 1980, by the solicitor was properly considered by the Board.

Accordingly, appellant's request for reconsideration of the Board's decision dated October 15, 1980, is denied.

//original signed

Franklin Arness
Administrative Judge

I concur:

//original signed

Wm. Philip Horton
Chief Administrative Judge